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TOWN ATTORNEY REPORT

DATE: April 23, 2002
FROM: Monroe D. Kiar
RE: Litigation Update

1. **Sunrise Water Acquisition Negotiations:** The Town requested competitive proposals for providing engineering services to conduct a western area utilities study. The Bid Selection Committee met on September 12, 2001 and ranked URS as its first choice. At the Town Council Meeting of October 3, 2001, a resolution was approved selecting URS to provide engineering services for the western area utilities study and authorizing the Town Administrator to negotiate an agreement with URS for such services. The Administration advises that its negotiations as to the terms of an agreement with URS are ongoing and that there are still some terms to be worked out. The Town Attorney's Office confirmed with the Administration on April 11, 2002, that its negotiations as to the terms of an agreement with URS are still ongoing and that there is still some terms to be worked out.
2. **Ordonez, et al v. Town of Davie:** As indicated in earlier reports to the Town Council, this matter went to trial and the jury returned a zero verdict for the Plaintiffs. Mr. Burke filed a Motion to Tax Costs and Attorney's Fees against the Plaintiffs and the Court entered a Judgment in favor of the Town of Davie against the Plaintiffs in the amount of \$6,514.34. Since the Florida League of Cities advanced all costs and attorney's fees in this matter, it will seek to recover upon the Judgment from the Plaintiffs directly. From my discussions with Mr. Burke on this date (April 24, 2002), it appears that it is his continued belief that the Florida League of Cities will not be seeking reimbursement from the Town for the \$6,514.34 in costs and attorney's fees which it expended in this matter, but will be seeking to recover them from the Plaintiffs (Ordonez).
3. **Seventy-Five East, Inc. and Griffin-Orange North, Inc. v. Town of Davie:** A Final

Order and Judgment Granting Petition for Common Law Certiorari was entered by Judge Patricia Cocalis in these two consolidated cases. A copy of the Final Order and Judgment Granting Petition for Common Law Certiorari were forwarded to the Town Council by the Town Attorney's Office along with a letter addressed to the Town Attorney which is a document exempt from public record disclosure pursuant to Florida Statutes §119.07(3)(1), until the conclusion of the referenced litigation. Said document set forth the comments of the Florida League of Cities attorney assigned to the Town, Mr. Michael T. Burke. On April 9, 2002, a Special Executive Session was held by the Davie Town Council with Mr. Burke and the Town Attorney present, and the Town Council gave its direction to Mr. Burke to file an appeal of the Order entered by Judge Cocalis with the 4th District Court of Appeal. On April 17, 2002, Mr. Burke filed a Petition for Writ of Certiorari on behalf of the Town of Davie with the 4th District Court of Appeal. The 4th District Court of Appeal will review the Petition and if the Court finds that it demonstrates a preliminary basis for relief, then the District Court will enter an Order to Show Cause which will require Griffin-Orange North and Seventy-Five East to file a response to the Petition within the time set by the Court. If the 4th District Court of Appeal concludes that the Petition does not demonstrate a preliminary basis for relief, then it will dismiss the Petition.

4. **MVP Properties, Inc.:** The United States District Judge granted the Town of Davie's Motion for Summary Judgment and entered a Final Summary Judgment in favor of the Town and against the Plaintiff, MVP Properties, Inc. MVP Properties, Inc. filed a Notice of Appeal and both sides have filed their Appellate Briefs. Mediation was ordered by the 11th Circuit Court of Appeals which was held on November 1, 2001, but a settlement of this dispute was not reached. Mr. Burke offered to waive the outstanding Cost Judgment if the Plaintiff Corporation would agree to withdraw its appeal. MVP Properties, Inc. rejected this proposal and it was unwilling to make a counter-proposal unless the Town of Davie expressed a willingness to pay the Plaintiff Corporation some amount of money. The mediation ended with an impasse. Oral argument on the Appeal filed by MVP Properties, Inc. was heard on February 1, 2002, at the Federal Courthouse in Miami, Florida. The 11th Circuit Court of Appeals affirmed the decision of the lower court in favor of the Town of Davie and against the Plaintiff, MVP Properties, Inc. Mr. Burke advised on this date that he is pursuing collection of the Judgment for costs that has been obtained from MVP Properties, Inc. and he has previously written to the attorney for MVP Properties, Inc. requesting that same be paid forthwith. He will also contact the attorney verbally this week relevant to payment by MVP Properties, Inc. of the Judgment for costs. Mr. Burke has further indicated that he believes MVP Properties, Inc. may have recently filed a new lawsuit in State Court against the Town of Davie, but apparently, the Town has not yet been served with process. He is attempting to verify this fact as well.
5. **Town of Davie v. Malka:** On this date, the Town Attorney's Office again spoke with

the Chief Building Official, Mr. Craig, who again confirmed that the exterior of the home is complete and that Mr. Malka is continuing to complete of the interior which will consist of a living room addition. Mr. Malka has hired contractors and the interior work is progressing. The building official has indicated that his department continues to keep a close contact with this property owner to insure proper completion of all additions to the structure as promised by Mr. Malka.

6. **City of Pompano Beach, et al v. Florida Department of Agriculture and Consumer Services:** The Governor recently signed into law a Bill allowing the Department of Agriculture and Consumer Services far reaching powers. The Department of Agriculture has indicated that it will resume cutting all exposed trees within the 1900 foot radius of an infected tree in the very near future. In March, 2002, representatives from the Department of Agriculture and supporters of the coalition of cities appeared before the Town Council. The Davie Town Council voted 4-1 to join with Broward County in filing a lawsuit to enjoin the Department of Agriculture from initiating the cutting of the uninfected, but exposed trees. A copy of the Complaint filed by the County and coalition of cities, including Davie, was previously provided to the members of the Town Council by the Town Attorney's Office. The lawsuit which is now pending before Judge Fleet, seeks a stay to prevent the cutting of exposed, but uninfected trees as now permitted under the recently passed Bill. The trial on the coalition of cities' Complaint seeking an injunction to enjoin the Florida Department of Agriculture and Consumer Services from cutting trees within the 1900 foot radius of an infected tree as well as enjoining the Department from issuing any new IFO's commenced on April 12, 2002. The trial to this date, has encompassed several days and will resume again next week. It is expected that the trial will continue into May. The coalition of cities has raised several arguments, including a challenge to the constitutional validity of the Bill which was passed pursuant to the provisions of the Constitution of the United States and of the State of Florida.
7. **Christina MacKenzie Maranon v. Town of Davie:** The Town of Davie has filed a Motion for Summary Final Judgment on behalf of the Town of Davie and Police Officer Quentin Taylor seeking to dismiss both parties as defendants in this lawsuit. The Motion for Summary Judgment continues to remain pending. In the meantime, the Court has removed the case from the trial docket pending its ruling on our Motion for Summary Judgment. The Town Attorney's Office has been in contact with the outside attorney assigned by the Florida League of Cities in this case, Mr. McDuff, and he advises that as the Plaintiff had failed to take any action in this matter for many months, his office has filed a Motion to Dismiss the lawsuit for lack of prosecution and said Motion is scheduled to be heard before the Court on May 1, 2002.
8. **Reinfeld v. Town of Davie, et al:** The parties are currently conducting considerable discovery. The deposition of the Plaintiff was taken and based upon the contents of

that deposition, Mr. Burke has filed a Motion seeking the entry of a Summary Judgment in favor of the Town and against the Plaintiff, Reinfeld. Mr. Marrero, the Florida League of Cities Attorney assigned to represent former Vice Mayor Weiner, has also filed a Motion for Summary Judgment on behalf of his client. Both attorneys have indicated to the Town Attorney that they are confident that their Motions will be granted by the Court. Both Motions are now pending, but not yet scheduled for hearing. A mediation session was held on March 7, 2002, but an impasse was reached. The Town Attorney's Office has spoken with Mr. Burke this date and he has advised that the Plaintiff has now responded to the Motion for Summary Judgment filed on behalf of the Town. Mr. Burke further advises that the Plaintiff has dropped a portion of her claim for gender discrimination as well as her First Amendment retaliation claim. There are now 3 Counts remaining, two against the Town and one against former Vice Mayor Weiner. This matter is still scheduled to be tried sometime in May, 2002, although the Court has not yet ruled on either Motion for Summary Judgment.

9. **Spur Road Property:** Mr. Burke, our outside legal counsel, gave a presentation to the Town Council 3 meetings ago, and advised the Council that the Division of Administrative Hearings had ruled against the Town of Davie's protest to the Department of Transportation's award of the property to the highest bidder, and that a Final Order had been entered by the Department of Transportation adopting the recommendations of the Judge for the Division of Administrative Hearings. Mr. Burke requested that the Council provide him with direction as to how to proceed in this matter and the Council authorized him to take an appeal of the Final Order that was entered against the Town. Mr. Burke has filed a Notice of Appeal and on this date, April 24, 2002, advised the Town Attorney's Office that his office is presently preparing their Appellate Brief.
10. **Victoria Saldena v. Town of Davie:** Ms. Saldena is suing the Town of Davie and another defendant relevant to an automobile accident. Mr. Johnson, the attorney assigned to represent the Town by the League of Cities, has assured the Town Attorney's Office that there should be no exposure to the Town which would exceed its insurance coverage and that the maximum exposure to the Town is its deductible. The Court recently issued an Order setting this matter for jury trial during the 5 week jury trial calendar commencing Tuesday, September 3, 2002. The Judge assigned to this case is Judge Charles M. Greene, a well respected Judge of the 17th Judicial Circuit of Broward County. Recently, depositions were taken of the treating physician as well as the doctor hired by the Plaintiff's PIP carrier, to conduct an independent medical examination of the Plaintiff. Our outside legal counsel was pleased with the depositions and pleased with the testimony presented by the Board Certified Orthopaedic Surgeon, Dr. Stein, who conducted the independent medical examination for the PIP carrier, which was eventually utilized to terminate the Plaintiff's PIP benefits. The Town Attorney's Office spoke with Mr. Johnson's office this date, and was advised that further discovery and depositions

are being conducted at this time and will continue in the future.

11. **Cummings v. Town of Davie:** A Stipulated Final Judgment was submitted to the Court and signed by Judge Streitfeld in this matter on January 17, 2002. Pursuant to the terms of the Stipulated Final Judgment, the Town received from the Cummings a Quit Claim Deed transferring ownership of the disputed sidewalk property to the Town of Davie. The Town Council at its first Council Meeting held in March, 2002, accepted the Quit Claim Deed. The Town is in the process of recording the Deed and once it is returned to the Town, a copy will be transmitted to the attorney for Mr. and Mrs. Cummings pursuant to the Agreement and the Town Attorney's Office will close its file on this case.
12. **Proposed Sidewalk in Front of Foster Home:** As indicated previously in earlier Litigation Reports, after considerable negotiations, the parties were able to resolve their differences and the Fosters agreed to donate a permanent easement to the Town of Davie for the purposes of constructing the last segment of the sidewalk. The Town will pay all costs related to the conveyance of the permanent easement, including, but not limited to, the preparation of the conveyance documents and the fees charged by the Fosters' engineering expert, Mr. Arnold Ramos, as well as the costs of the legal descriptions of the areas to be conveyed to the Town which shall be prepared by McLaughlin Engineering, and the attorney's fees incurred by the Fosters relevant to this matter. As indicated, this office was advised by the attorney for the Fosters that the total costs to the Town are within the direct authority of the Administrator. The Town Attorney has visited the subject site on several occasions at no cost to the Town, to view the sidewalk completion work as it has progressed. From a view of the property, the sidewalk now appears to be complete. The Town Attorney's Office did receive a call from the attorneys for the Fosters indicating that the sod that has been placed next to the sidewalk is brown and possibly needs to be replaced. The Town Attorney's Office will accordingly, so advise the Public Works Department of this fact.